REMARKS

Claims 1-23 were pending in the present application. Claims 1-20 stand rejected. Claims 21-23 were withdrawn from consideration. By this Amendment, claims 21-23 have been canceled. This application now continues claims 1-20.

Please cancel withdrawn claims 21-23 without prejudice or disclaimer to advance the prosecution of the present application.

The PTO's non-acceptance of the Terminal Disclaimer filed August 22, 2006, is in error. In the final Office Action it is stated that the terminal disclaimer is not accepted, as it does not comply with 37 CFR 1.321 (b) and/or (c). In particular, it is stated that, " The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because: It does not include a recitation that any patent granted shall be enforceable only for and during such period that said patent is commonly owned with the application(s) or patent(s) which formed the basis for the double patenting rejection. See 37 CFR 1.321(c)(3)."

As a first point, Applicants used the PTO's own form, PTO/SB/25 (Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application), that is designated as being "Approved for Use through 9/30/2006". This designation is reproduced below for the Examiner's convenience and consideration:

PTO/SB/25 (07-06)
Approved for use through 09/30/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

As a second point, the language that is asserted by the PTO to be absence is very clearly in the second sentence of the first full paragraph of the Terminal Disclaimer, which is reproduced below for the Examiner's convenience and consideration:

The owner*, Lexmark International, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending **reference** Application Number 11/122,399, filed on May 5, 2005, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

As a third point, the form of the text of the paragraph reproduced above is identical to the corresponding paragraph in the PTO form now posted and approved for use through March 31, 2007, which is reproduced below for the Examiner's convenience and consideration:

The owner*, _____, of _____ percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending **reference** Application Number _____, filed on _____, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

Accordingly, for at least the reasons set forth above, Applicants respectfully submit that the Terminal Disclaimer filed August 22, 2006, is in proper form and includes the language approved by the PTO to ensure compliance with 37 CFR 1.321. Therefore, it is respectfully requested that the PTO enter the Terminal Disclaimer filed August 22, 2006, without further delay.

Claims 1, 3, 4, 10, 12, 13, and 19 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 26, 27, 29 and 31 of co-pending U.S. Patent Application Serial No. 11/122,399. Applicants filed a proper Terminal

Disclaimer directed to U.S. Patent Application Serial No. 11/122,399 on August 22, 2006. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 3, 4, 10, 12, 13, and 19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 26, 27, 29 and 31 of co-pending of U.S. Patent Application Serial No. 11/122,399.

Claims 2, 5-9, 11, 14-18 and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 26, 27, 29 and 31 of co-pending U.S. Patent Application Serial No. 11/122,399 in view of Sakuma (U.S. 5,663,750). As set forth above, the previously submitted Terminal Disclaimer is directed to U.S. Patent Application Serial No. 11/122,399, which thus removes the primary reference from this rejection. Accordingly, this rejection of claims 2, 5-9, 11, 14-18 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over 2, 5-9, 11, 14-18 and 20 of U.S. Patent Application Serial No. 11/122,399 in view of Sakuma has been overcome.

In addition, Applicants repeat, and hereby incorporate by reference, the further arguments made with respect to Sakuma as set forth in the Response filed August 22, 2006, in response to the Office Action of June 15, 2006, which for brevity will not be repeated here.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 2, 5-9, 11, 14-18 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 26, 27, 29 and 31 of co-pending U.S. Patent Application Serial No. 11/122,399 in view of Sakuma.

For the foregoing reasons, Applicants submit that the pending claims are in condition for allowance, and Applicants respectfully request withdrawal of all rejections and allowance of the claims.

In the event Applicants have overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby conditionally petition therefor and authorize that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Should any question concerning any of the foregoing arise, the Examiner is invited to telephone the undersigned at (317) 894-0801.

Respectfully submitted,

/ Ronald K. Aust /
Ronald K. Aust
Registration No. 36,735

Attorney for Applicants

RKA/ts

Electronically Filed: December 29, 2006

TAYLOR & AUST, P.C.
12029 E. Washington Street
Indianapolis, IN 46229
Telephone: 317-894-0801
Facsimile: 317-894-0803